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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

July 22, 1994

Mr. William Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: Local Exchange Carriers' Rates, Terms, and Conditions for
Expanded Interconnection for Special Access, CC Docket No.
93-162

Dear Mr. Caton:

Enclosed herewith for filing are the original and seven (7) copies of MCI
Telecommunications Corporation's Petition in the above-captioned matter.

Please acknowledge receipt by affixing an appropriate notation on the copy of
the MCI Petition furnished for such purpose and remit same to bearer.

Sincerely,

Donald F. Evans
(mlb)

Donald F. Evans
Director, Federal Regulatory Affairs
MCI Telecommunications Corporation

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUL 22 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:)
)
Local Exchange Carriers' Rates,)
Terms, and Conditions for) CC Docket No. 93-162
Expanded Interconnection for)
Special Access)

MCI OPPOSITION TO SUPPLEMENTAL
DIRECT CASE

MCI Telecommunications Corporation ("MCI") opposes the supplemental direct case filed by United and Central Telephone Companies ("United") in response to the Common Carrier Bureau's Supplemental Designation Order and Order to Show Cause.¹ In the Supplemental Designation Order, the Bureau noted that the Commission had previously ordered that rates for central office construction of physical collocation arrangements should be tariffed to ensure that all interconnectors could obtain construction on a nondiscriminatory basis. The Bureau described the Commission's decision as requiring the tariffing of unit charges for time and material, and stated that these tariffed unit charges could vary by central office. The Bureau found that while United provides in its tariff that construction charges will be formulated on a time and materials basis, the tariff does not

¹ Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection for Special Access, CC Docket No. 93-162, Supplemental Designation Order and Order to Show Cause, DA 94-556, released May 31, 1994 (Supplemental Designation Order).

disclose what the charges will be. In light of this finding, the Bureau designated several issues for investigation, exploring whether United's tariff complies with the Commission's directives. The Bureau also issued an Order to Show Cause against United, finding that United's tariff continues to contain references to individual case basis (ICB) arrangements despite the Commission's prior directive to remove references to ICB arrangements from the tariff.²

I. ISSUE 1

United should explain how its approach to time and materials charges differs from the use of individual case basis rates.

United's Supplemental Direct Case suffers from some of the same defects as the arguments mounted by Bell Atlantic in response to the Supplemental Designation Order.³ Following Bell Atlantic's lead, United simply restates the legal proposition that ICB rates are not generally available, and are therefore not offered on a common carrier basis. United then argues that construction charges

² United's Direct Case offers to withdraw references to ICB arrangements from its physical collocation tariff. United Supplemental Direct Case at 7. MCI believes that United's efforts to comply with the Commission's explicit instructions, belated as they may be, will cure the problem of United's tariff displaying language that is patently unlawful. As a result, MCI will not separately address in this pleading the Order to Show Cause. However, as discussed below, MCI believes that United's offer to delete references to ICB language does not put United's tariff in compliance with Commission requirements.

³ See MCI's Opposition to Supplemental Direct Case, filed June 22, 1994 (opposing filings made by Bell Atlantic and Rochester).

for expanded interconnection are common carrier charges, while ICB rates are not. Unfortunately, this restatement of law does not address the substantive question at issue, i.e., whether tariff language that offers cage construction on a "time and materials" basis is tantamount to an ICB arrangement that the Commission explicitly stated would not be allowed. As stated previously, MCI believes that tariff references to "time and materials" charges that are left unspecified are an invitation to individualized pricing and discrimination. The unit charge for construction in a specific office should be the charge that applies to all interconnectors.

United's second argument, that it ought to be able to pass through to the interconnected carrier whatever the costs are for any given construction job, is an argument that should have been raised on reconsideration of the Commission's Expanded Interconnection Order.⁴ Once the Commission has ordered in its rulemaking that the local exchange carriers file an equal charge per central office for construction of physical collocation arrangements, the tariff process implementing expanded interconnection cannot be used to usurp the Commission's determination. Whatever policy arguments United advances in favor

⁴ Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, 7 FCC Rcd 7369 (1992) (Expanded Interconnection Order), recon. in part, 8 FCC Rcd 127 (1992), further modified on recon. 8 FCC Rcd 7341 (1993), other petitions for recon pending, rev'd and remanded Bell Atlantic Corp. v. FCC, No. 92-1619 (D.C. Cir. June 10, 1994).

of using a time and materials approach to construction charges, those arguments are an insufficient ground to permit United to ignore a specific Commission requirement absent grant of a waiver or reconsideration of the rule.

II. ISSUE 2

United should explain why it should not be required to provide time and materials charges through a "menu" of specific prices for different service components (such as rates for wire mesh cages; rates for wallboard cages; cages with/without air conditioning, etc.).

United's Supplemental Direct Case on this issue argues that a menu-driven approach to construction charges would be burdensome for it to produce, complicate its collocation tariff, and would not yield just and reasonable rates.⁵ MCI has no strong preference for a "menu" approach in tariffing the construction charge. If United is opposed to tariffing a menu of construction items, it should tariff a standard time and materials rate.

III. ISSUE 3

United's tariff provides that an estimate of charges will be given to the interconnector prior to construction. After construction is completed, United will reconcile estimates with the actual costs of construction and file tariffed rates based on actual costs.

(a) United should describe its procedures for developing pre-construction estimates and submitting these estimates to interconnectors. For example, United should address: whether estimates will be in writing; whether estimates will be itemized; how long after receiving a request for construction will United submit an estimate; how long the estimate will remain valid; how an interconnector must accept an estimate; and United's policies

⁵ United Supplemental Direct Case at 4.

regarding payment of estimated charges. United should cite existing tariff provisions to support its responses.

(b) United and interested parties should address whether local exchange carriers (LECs) should be required to limit the amount they may charge interconnectors to the pre-construction estimate. Alternatively, parties should address whether LECs should be required to cap the amount they may charge interconnectors over the pre-construction estimate, e.g., 10 percent.

United argues that its tariff requires the customer to provide a written application for a physical collocation arrangement. United then provides a written estimate that specifies how long the customer has to accept the arrangement.⁶

As previously stated, MCI prefers a tariff approach that provides a per unit rate for construction. The United method, by contrast, permits United to charge different rates to different interconnectors depending upon which contractor it selects to prepare the construction quote. MCI believes that United's construction charge practices must change to conform with the Commission's stated policy.⁷

IV. ISSUE 4

United's tariff permits a mutually agreed upon contractor to construct the cage. Parties should comment on the usefulness of this option in keeping LECs' cage construction charges just and

⁶ United Supplemental Direct Case at 5.

⁷ United's Supplemental Direct Case observes that it would agree to capping construction charges to interconnectors at a level that is 10 percent above the pre-construction estimate, after allowing for adjustments for any agreed-upon changes. MCI agrees that capping the total construction charge is a positive step in ensuring that interconnectors can determine in advance the charges for construction. However, MCI believes that a tariffed time and materials charge is a better approach.

reasonable. United should provide details regarding its arrangement, such as the criteria it uses to approve contractors selected by interconnectors.

United argues that allowing interconnectors to select their own contractors, subject to its review, is useful only if United is free to charge for construction on a per arrangement basis. According to United, if it is forced to charge for construction using an average time and materials charge per end office, interconnectors will only take United's construction service in circumstances in which the interconnector cannot construct the cage itself at a lower price. United therefore argues that its "average" charge will not recover its costs, since it will only be asked to construct in cases where costs are high.⁸

United's argument makes little sense. In implementing physical collocation cage construction, United determines the costs it must pay to its vendors for those cages which it constructs. Assuming, arguendo, that those costs fluctuate seasonally or per arrangement, United should calculate a reasonable average per end office. This rate will ensure that on average it is recouping the costs it pays its vendors for constructing cages.⁹ If an interconnector decides to use its own construction vendor, that

⁸ United Supplemental Direct Case at 6-7.

⁹ United's average construction cost must, of course, reflect its estimate of the number of cages it will construct. That United's estimate may be incorrect in this case is no different from any other new service, where it must estimate the number of units it will sell.

decision does not impair United's ability to recover its costs because in that case, United has no costs. If United has no costs, then United cannot find itself underrecovering due to an interconnector's decision to undertake cage construction itself. Stated differently, United's average cost calculation necessarily only takes into account those instances when United is responsible for the construction.

MCI believes that self-provisioning options for collocation arrangements is the most efficient way for the Commission to ensure that the LECs are not abusing their bottleneck control of interconnection facilities. MCI strongly supports self-provisioning options, such as the one offered by United for cage construction. As the Commission recognized in its recent announcement concerning virtual collocation, self-provisioning can often be the most efficient means of providing interconnection service.¹⁰

¹⁰ News Release, "FCC Reaffirms and Modifies Its Expanded Interconnection Policy," CC Docket No. 91-141, released July 14, 1994, Attachment at 3 (discussing self-provisioning of maintenance services in virtual collocation arrangements).

WHEREFORE, in view of the foregoing, MCI requests that the Commission order United to amend its expanded interconnection tariff to comply with the requirement that a uniform, per unit construction charge be tariffed for each central office where physical collocation is available.

Respectfully submitted,

MCI TELECOMMUNICATIONS CORPORATION

Donald F. Evans (mlb)

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Dated: July 22, 1994

CERTIFICATE OF SERVICE

I, Gwen Montalvo, do hereby certify that copies of the foregoing MCI Opposition to Supplemental Direct Cases, CC Docket 93-162, were sent via first class mail, postage paid, to the following on this 22nd day of July, 1994:


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